



May 30, 2019

Mr. Adam Hahn
via email: 71867-08472454@requests.muckrock.com

RE: FOIA Appeal No. 2019-IGAP-00007
FOIA No. 2019-IGFP-00269

Dear Mr. Hahn:

This responds to your May 23, 2019 appeal regarding your Freedom of Information Act ("FOIA") request to the U.S. Postal Service, Office of Inspector General ("OIG"). You sought records related to the March 17, 2016 arrest and processing of Brooklyn, NY Letter carrier Glen Grays, Jr.

As the FOIA analyst previously explained, the OIG reviewed its records for responsive material and located one file responsive to your request. The analyst reviewed the forty-one pages contained in the file and determined three pages were appropriate for release with proper redactions pursuant to FOIA Exemptions 3¹ and 7(C).² The analyst withheld thirty full pages under FOIA Exemptions 3, 5,³ and 7(C). The OIG could not release the remaining eight pages because they originated with the New York Police Department.

The information was appropriately redacted and withheld within the confines of the law. FOIA Exemption 3 allows the withholding of information prohibited from disclosure by another federal statute when that statute "refers to particular types of matters to be withheld." 5 U.S.C. § 552(b)(3). In this case, some of the redacted and withheld material falls within the purview of the Inspector General Act of 1978, which protects the identity of an employee that makes a complaint or discloses information to the Inspector General. See 5 U.S.C. app. 3 § 7(b). As you point out, the identities of employees disclosing information to the OIG were properly withheld under Exemption 3. The FOIA analyst also

¹ 5 U.S.C. § 552(b)(3). Exemption 3 provides agencies may withhold records under another exempting statute that "establishes particular criteria for withholding or refers to particular types of matters to be withheld." Under the Inspector General Act of 1978, an OIG is duty-bound to protect information provided by agency employees during an investigation. 5 U.S.C. app. 3 § 7(b).

² 5 U.S.C. § 552(b)(7)(C). Exemption 7(C) permits the withholding of records or information compiled for law enforcement purposes, the release of which could constitute an unwarranted invasion of the personal privacy of third-parties. Lacking an individual's consent or an overriding public interest, third-party investigatory records and/or allegations of misconduct must be withheld under Exemption 7(C).

³ 5 U.S.C. § 552(b)(5). Exemption 5 pertains to certain inter-agency and intra-agency communications protected by the deliberative process privilege. Individuals merely offering opinions, recommendations, or queries aimed at addressing agency investigations which are not final, binding agency findings are withheld under FOIA Exemption 5.

redacted and withheld other personally identifying or otherwise protected information under FOIA Exemptions 7(C) and 5.

FOIA Exemption 7(C) authorizes the withholding of “records or information compiled for law enforcement purposes” where disclosure “could reasonably be expected to constitute an unwarranted invasion of personal privacy,” absent an overriding public interest in disclosure. 5 U.S.C. § 552(b)(7)(C). Courts have held there is no inherent public interest in the release of the names or telephone numbers of law enforcement agency personnel or rank-and-file employees merely carrying out their duties. *See New England Apple Council v. Donovan*, 725 F.2d 139, 142–44 (1st Cir. 1984). Similarly, releasing unredacted third-party statements could lead to the identification, and in some cases, harassment of innocent witnesses or postal employees. This balance between the public interest and individual privacy applies to both the special agents and letter carriers that could be identified if the withheld information were released.

Here, the OIG gathered the withheld material in the scope of an OIG law enforcement investigation. The records consist of third-party interviews which must be protected to guard against unwarranted invasions into privacy and to provide the confidence necessary to encourage cooperation with law enforcement agencies.

You assert that there is a diminished privacy interest in the withheld information because publicly available news articles detail the identities of NYPD detectives involved and disciplinary actions taken against them. However, this in no way diminishes the privacy interests of USPS employees and/or other witnesses that cooperated with the USPS OIG investigation. Alternatively, the demonstrated public and media interest in the incident heightens the reasonable likelihood of identification and harassment, intimidation, or physical harm to innocent witnesses and/or postal employees should material be improperly released. While the public’s interest in disclosure is important, it does not outweigh the third-party witnesses’ privacy interests under these circumstances.

Finally, FOIA Exemption 5 allows the withholding of “inter-agency or intra-agency memorandums or letters that would not be available by law to a party other than an agency in litigation with the agency.” 5 U.S.C. § 552(b)(5). The FOIA analyst did not withhold any correspondence with non-federal agencies under this exemption. Rather, the FOIA analyst correctly applied this exemption in withholding information that the deliberative process privilege protects. *See United America Fin., Inc. v. Potter*, 667 F. Supp. 2d 49, 57 (D.D.C. 2009) (explaining that qualifying information must be predecisional and deliberative). The withheld information consists of intra-agency communications offering opinions, recommendations, or queries concerning the investigation which were not final, binding agency findings. Such information is not appropriate for discretionary disclosure.

Upon carefully reviewing your appeal, I find that the FOIA analyst complied with FOIA’s requirements and properly applied its exemptions in rejecting your request for unredacted copies of the documents relating to the investigation. Thus, I must affirm her initial determination.

Insofar as my decision does not constitute a full grant of access to the withheld material, FOIA requires that I inform you of your right to judicial review. Such review is available to you in the United States District Court for the judicial district in which you reside or have

your principal place of business, the district in which the records are located, or in the District of Columbia.

Further, the 2007 FOIA amendments created the Office of Government Information Services ("OGIS"), which offers mediation services to resolve disputes between FOIA requesters and federal agencies as a non-exclusive alternative to litigation. Using these services does not affect your right to pursue litigation.

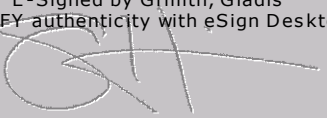
The contact information for OGIS is as follows:

National Archives and Records Administration
Office of Government Information Services
8601 Adelphi Road
College Park, MD 20740-6001
Email: ogis@nara.gov
Phone: (202) 741-5770 or (877) 684-6448
Fax: (202) 741-5769

I hope this information is helpful to you.

Sincerely,

E-Signed by Griffith, Gladis
VERIFY authenticity with eSign Desktop



Gladis C. Griffith
Freedom of Information Act Appeals Officer

cc: FOIA Analyst